

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	
)	
NUCLEAR METALS SUPERFUND SITE)	U.S. EPA
)	
)	Docket No. CERCLA 01-2012-0096
)	
Proceedings relating to a settlement agreement under Section 122(d)(3) for action under Section 104(b) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9604(b), 9622(d)(3))	
)	

SECOND AMENDMENT TO ADMINISTRATIVE ORDER BY CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

INTRODUCTION

WHEREAS, on June 13, 2003, the Deputy Director of the United States Environmental Protection Agency ("EPA") for Region 1, Office of Site Remediation and Restoration ("OSRR"), signed an Administrative Order By Consent For Remedial Investigation/Feasibility Study ("RI/FS") (U.S. EPA Docket No. CERCLA 01-2003-0021) (the "Order" or the "AOC") for the Nuclear Metals Superfund Site in Concord, MA (the "Site");

WHEREAS, on February 13, 2008, an *Amendment to Administrative Order By Consent For Remedial Investigation/Feasibility Study* with an effective date of February 18, 2008 was signed by the Deputy Director of OSRR for EPA for Region 1 (the "Amended AOC");

WHEREAS, the Amended AOC requires the Respondents and the Settling Federal Agencies to finance the performance of the Work under the Amended AOC up to a total amount of \$14,000,000, and, in the event that a Revised Cost Estimate for performance of the Work, exceeds \$14,000,000, to immediately commence negotiations to address the payment of costs for such Revised Cost Estimate;

WHEREAS, all initially-capitalized terms used herein, unless defined in this Second Amendment, shall have the meanings provided in the Amended AOC;

WHEREAS, pursuant to the Amended AOC, on or about May 7, 2012, the Trustee of the RI/FS Trust Fund submitted to the Respondents, the Settling Federal Agencies, and EPA a Revised Cost Estimate for performance of the Work that exceeded \$14,000,000;

WHEREAS, the Respondents and the Settling Federal Agencies, by this *Second Amendment to Administrative Order By Consent For Remedial Investigation/Feasibility Study* (this "Second Amendment") agree to finance their respective shares of the costs to complete the Work as set forth in the most current Revised Cost Estimate (as specified below), and to

immediately commence negotiations to address the payment of costs in the event that any subsequent Revised Cost Estimate for performance of the Work exceeds \$16,000,000;

WHEREAS, Paragraph 98 of the Amended AOC permits the Amended AOC to be modified only upon the written agreement of EPA by signature of the Director, OSRR, each of the Settling Federal Agencies and each of the Respondents;

NOW, THEREFORE, EPA, the Respondents, and the Settling Federal Agencies have agreed to modify the Amended AOC, as follows:

A. In Section IX. (TRUST FUND; ADDITIONAL PAYMENTS), the following language is added after Paragraph 23(d):

(e) Pursuant to Paragraph 23(d) of the Amended AOC, the Respondents paid a total of \$80,000 into the RI/FS Trust Fund in 2008.

(f) The Respondents have now secured a Revised Cost Estimate to complete the Work of \$16,000,000. The amount exceeding the \$14,000,000 ceiling in the AOC is \$2,000,000. The Respondents shall pay \$40,000 into the RI/FS Trust Fund, within 30 days of the effective date of this Second Amendment, which amount is Respondents' 2.0% share of the portion of the Revised Cost Estimate amount exceeding \$14,000,000, and which includes the estimated costs to reimburse EPA for Response and Oversight Costs.

B. In Section IX. (TRUST FUND; ADDITIONAL PAYMENTS), clause (c) in Paragraph 26 is stricken and replaced with the following:

(c) any revisions to the revised estimate of the total costs for the Work accompanied by an explanation of any cost increases from \$16,000,000 ("Revised Cost Estimate");

C. In Section IX. (TRUST FUND; ADDITIONAL PAYMENTS), Paragraph 34 is stricken in its entirety and replaced with the following:

Notwithstanding any other provision of this Order, nothing herein shall be construed to require the United States, on behalf of the Settling Federal Agencies, to make more than \$15,680,000 in total payments to the RI/FS Trust Fund (exclusive of income on Permitted Investments), nor to require the Respondents to make more than \$320,000 in total payments to the RI/FS Trust Fund (exclusive of income on Permitted Investments). In the event that the Settling Federal Agencies have presented an objection to an Additional Funding Request that was not resolved during the Informal Resolution Period, the \$15,680,000 ceiling on total Settling Federal Agency payments shall be reduced by the Objection Amount, as those terms are described in Paragraph 32 herein. In the event that any Additional Funding Request asks the Settling Federal Agencies or the Respondents to make additional contributions that would result in total payments exceeding these amounts, the Settling Federal Agencies and the Respondents shall be required to make the portion of those payments that will not exceed a total of \$15,680,000 (as adjusted by any Objection Amount) and \$320,000, respectively, in accordance with Paragraphs 29 through 32 herein. In addition, in the event an Additional Funding Request is presented that exceeds these amounts, the Respondents, EPA, and the Settling Federal Agencies shall immediately commence negotiations to address the payment of costs for the most current Revised Cost Estimate that are not addressed by this Order or any amendment hereto. If such negotiations prove necessary, to the extent that the RI/FS Trust

Fund has suffered any unrecovered losses due to actions of the trustee referenced in Paragraph 31(b) herein, the Settling Federal Agencies will not contend that the Respondents' share of the costs that are the subject of the negotiations should be increased based on allegations that the Respondents were negligent in their selection of the trustee, provided that the selected trustee was approved by EPA pursuant to Paragraphs 23 or 25 of this Order.

D. In Section X. (REIMBURSEMENT OF RESPONSE COSTS BY SETTLING FEDERAL AGENCIES), clause (d) in Paragraph 36 is stricken and the following language is added after Paragraph 36(c):

(d) Pursuant to Paragraph 36(c) of the Amended AOC, the Settling Federal Agencies paid \$3,920,000 into the RI/FS Trust Fund in 2008.

(e) As soon as reasonably practicable, the United States, on behalf of the Settling Federal Agencies, shall pay \$1,960,000 into the RI/FS Trust Fund, which amount is the Settling Federal Agencies' 98.0% share of the amount exceeding \$14,000,000 in the Revised Cost Estimate to perform the remainder of the Work including estimated costs to reimburse EPA for Response and Oversight Costs. Payment shall be made in the form of a check, or by Electronic Funds Transfer in accordance with the instructions in Appendix E.

(f) If the payment to the RI/FS Trust Fund required by subparagraph (e) is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Second

Amendment, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

F. In Section XIII. (PLACE AND MANNER OF NOTICE.), the Army contact information in Paragraph 44 is stricken and replaced with the following:

Richard J. Murphy, Captain
U.S. Army Legal Services Agency
Environmental Law Division
9275 Gunston Road
Fort Belvoir, VA 22060

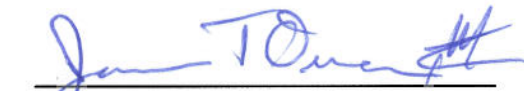
G. All other provisions of the Amended AOC, to the extent not superseded by the terms of this Second Amendment, remain in full force and effect.

H. The undersigned representatives for each party to this Second Amendment certify that he or she is fully authorized to enter into the terms and conditions of this Second Amendment and to execute and legally bind such party to this document.


I. This Second Amendment shall be effective five (5) days after the Second Amendment is signed by the Director, OSRR.

Second Amendment to Administrative Order by Consent
EPA Docket No. CERCLA 01-2012-0096
Nuclear Metals Superfund Site, Concord, MA

IT IS SO AGREED AND ORDERED BY:


James T. Owens, III
Director, Office of Site Remediation
& Restoration
U.S. EPA Region 1

10/2/12
Date


Sarah Meeks
Enforcement Counsel
U.S. EPA Region 1


9/27/12
Date

Second Amendment to Administrative Order by Consent
EPA Docket No. CERCLA 01-2012-0096
Nuclear Metals Superfund Site, Concord, MA

IT IS SO AGREED,

Name of Settling Federal Agency: US Army

By:


Kenneth J. Tozzi

Title:

Chief, Environmental Law Division

Date:

22 August 2012

IT IS SO AGREED,

Name of Settling Federal Agency:

U.S. Department of Energy

By:



Title:

Deputy A. G.C. for Environment

Date:

August 30, 2012

IT IS SO AGREED,

Name of Respondent:

Whittaker Corporation

By:



Title:

Eric G. Lardiere, President

Date:

August 16, 2012

Second Amendment to Administrative Order by Consent
EPA Docket No. CERCLA 01-2012-0096
Nuclear Metals Superfund Site, Concord, MA

IT IS SO AGREED,

Name of Respondent:

Textron Inc.

By:

John G. Duffy

Title:

V.P. & Deputy General Counsel-Litigation

Date:

8/20/12

OK
JMA
8/20/12